

Mt. Reshmi Vs. Ghungaria

Mt. Reshmi Vs. Ghungaria

SooperKanoon Citation : sooperkanoon.com/888773

Court : Himachal Pradesh

Decided On : Sep-18-1951

Reported in : AIR1952HP20

Judge : Chowdhry, J.C.

Acts : [Contract Act, 1872](#) - Sections 16 and 25

Appeal No. : Second Appeal No. 11 of 1951

Appellant : Mt. Reshmi

Respondent : Ghungaria

Advocate for Def. : Amar Chand Sud, Adv.

Advocate for Pet/Ap. : Amar Chand Hoshiarpuri, Adv.

Disposition : Appeal dismissed

Judgement :

Chowdhry J.C.

1. This is a second appeal by the plaintiff, Mst. Reshmi, whose suit for cancellation of a sale-deed, dated 5-7-1948, and registered the following day, in respect of zamindari and house property for the ostensible consideration of Rs. 1,400/- in favour of the defendant-respondent Ghungaria was decreed by the trial Court, but

dismissed on the defendant's appeal by the District Judge of Mahasu and Sirmur. The suit was filed on the ground that the sale had been brought about by the defendant by the exercise of undue influence and fraud.

2. The recital in the sale-deed and the Sub-Registrar's endorsement show that out of the said consideration Rs. 400/- went to the discharge of a debt owed by the vendor to the vendee and Rs. 1000/- were paid in cash to the former by the latter at the time of registration. There is a further recital that out of the Rs. 1,000/- paid in cash at registration Rs. 600/- were needed by the vendor in order to repay a debt due by her to one Behari Lal. The plaintiff's allegation was that she owed no debt to the vendee or to Behari Lal, and that the said sum of Rs. 1,000/- was taken back by the vendee from her outside the registration office.

3. Mutation on foot of the sale-deed was attested by the Naib-Tehsildar on 4-8-1948, but with regard to that the appellant denied having made any statement which she is shown as having made before the Naib-Tehsildar regarding the execution and consideration of the sale-deed and delivery of possession of the property sold.

4. A certain objection in respect of the sale appears to have been made in the Court of the Tehsildar by certain persons describing themselves as zamindars of the village to which the appellant belongs, and in that case also the appellant purports to have made a statement on 6-8-1948 before the said Naib-Tehsildar (to whom inquiry had been entrusted by the Tehsildar) supporting the execution and consideration of the sale-deed and delivery of possession of the property to the vendee and characterising the objection of the said objectors as unfounded. With regard to this statement also the appellant deposed that she had not made it.

5. A preliminary objection raised on behalf of the defendant-respondent that no second appeal lay had no force. The value of the property in suit being admittedly above Rs. 250/-, this is a good second appeal under paragraph 32 (1) (b) (i) of the Himachal Pradesh (Courts) Order, 1948. Under the same paragraph all grounds open in a first appeal are entertainable in this second appeal.

6. The entire law with regard to undue influence is contained in Section 16 of the Contract Act. In order that a transaction may be held as having been induced by undue influence three things are necessary: (1) that the relations subsisting between the parties were such that one of them was in a position to dominate the will of the other, (2) that the transaction secured unfair advantage to the person in a position to dominate the will of the other and (3) that this unfair advantage resulted from the use of that position. The burden of proving the first two ingredients lies on the party pleading undue influence, and as soon as he has done so it will be presumed that the third ingredient was also satisfied, unless the other party proves that the transaction was not induced, by undue influence. That this is a correct interpretation of the section will appear from the Privy Council decisions reported as 'Posathurai v. Kannappa Chettiar', AIR (7) 1920 P.C. 65, and Raghunath Prasad v. Sarju Prasad, AIR (11) 1924 P.C. 60. The former was a case where it was not proved that the transaction of sale sought to be impugned was unconscionable, and in the latter, which was a case of mortgage, it was not proved that the lender was in a position to dominate the will of the borrower. It follows therefore that it was incumbent in the first instance upon the plaintiff-appellant to prove, firstly, that the defendant-respondent was in a position to dominate her will and, secondly, that the transaction of sale was unconscionable. Only after her having proved these two facts would the burden have shifted on to the defendant-respondent to prove that the sale had not been induced by undue influence. The appellant has, however, failed to establish either of these facts.

7. The first thing the plaintiff-appellant had to prove was that the relations between her and the defendant-respondent were such that the latter was in a position to dominate her will. She is a resident of village Dhagog and the defendant that of Saria situate about five miles from her village. The plaintiff is by caste a Kanait and the defendant a Koli. Her husband had died about six years before the sale. The plaintiff is also illiterate and aged about eighty. She has stated, that she knew the defendant for about four or five years through, a tenant of hers, and that since then the defendant had been visiting her off and on and helping her by fetching fuel and other things for her. The defendant also admits having helped her in that manner although he professes to have known her and her husband for fifteen or sixteen years, which appears however to be an exaggeration for he did not even know

when the plaintiff's husband died. It may be taken therefore that for about four or five years before the execution of the sale-deed the defendant had been visiting the plaintiff and doing odd jobs for her. There is not even a suggestion that he helped her in the management of her property. On the contrary, it was admitted by her that she herself used to realise 40 or 50 maunds of produce as batai and Rs. 16/- half-yearly as rent in cash from her tenants, and that she used to sell the grass of her Ghasni land for Rs. 200/- or Rs. 300/- every year. There is no suggestion, much less proof, that she was helped in these transactions by anybody else. Furthermore, the present sale is not the only one made by her. Her own witness Behari Lal, a Municipal Commissioner at Simla, admits that about 3 or 4 years ago she had sold land to him in Kaithu, a suburb of Simla, for Rs. 400/-, and that a regular sale-deed was effected in respect of the same. There is nothing to show that for making that sale the plaintiff had to depend upon the help or advice of anybody. When asked about this transaction, she adroitly denied all knowledge of it. She even professed ignorance as to whether she owned any land in Kaithu or not. Vaguely she referred to a litigation, but she did not say whether it related to the sale in favour of Behari Lal. It is clear therefore that the plaintiff, though an old and illiterate widow, is a person who has been managing her affairs without depending upon the assistance or advice of any body.

8. So far as the defendant is concerned, the mere fact that he had been on visiting terms with the plaintiff for about 4 years, and that he used during this time to do odd jobs for her, could hardly be said to have put him in a position to dominate the will of the plaintiff. There is however one other position of his that has to be taken into consideration, that of a creditor for, as adverted to above, Rs. 400/- out of the total sale consideration of Rs. 1,400/- are said to have gone to the discharge of a debt owed by the vendor to the vendee. There is no doubt that the defence evidence with regard to this debt is conflicting and on the whole unsatisfactory, but, as already seen, the plaintiff being a woman who was able to manage her own affairs, it is incredible that she would have submitted to the inclusion of this item of Rs. 400/- as part of the sale consideration if she did not really owe it to the defendant. And, incidentally, I am not prepared for the same reason to believe that the recital in the sale-deed about her being indebted to the extent of Rs. 600/-, to her witness Behari Lal was unfounded, although he has come forward and stated

that neither the plaintiff nor her husband owed any sum to him and that nothing was paid to him by the plaintiff. This much at least is clear that, in case this recital of a sum of Rs. 600/- being due and owing to Behari Lal was falsely introduced by the defendant, the latter did at that time depend upon Behari Lal to help him in inflating the sale consideration. That hope was not eventually realised for Behari Lal came forward to support the plaintiff's version. Even if Behari Lal may not be dubbed a turn-coat merely on this circumstance, the recital about this sum of Rs. 600/- cannot fairly be attributed to the defendant. He had nothing to gain thereby since that sum was to be paid out of the sum of Rs. 1,000/-, which was admittedly paid to the plaintiff at the time of the registration of the sale-deed. Coming back to the item of Rs. 400/- which was the only sum recited as due to the defendant-vendee, it was by no means a big sum and formed but a small part of the total consideration. Considering the income from her property, therefore, it could not be said that the sale in suit was made by the impelling necessity of repayment of this debt of Rs. 400/- to the vendee. From all that has been stated above, it cannot therefore be said that the defendant was in a position to dominate the will of the plaintiff by reason either of his having held a real or apparent authority over her, or of the plaintiff being a person whose mental capacity was temporarily or permanently affected by reason of age.

9. The plaintiff having failed to prove that the defendant was in a position to dominate her will, she would not be entitled to any relief even though the transaction of sale had been unconscionable, as held in the AIR (11) 1924 P.C. 60 ruling cited above. In fact, the question of unconscionable nature of the bargain does not in the circumstance arise. It may, however, be stated that in my anxiety to find out the real nature of the bargain I examined the evidence on this question as well. Indeed, the two ingredients of one of the parties dominating the will of the other and the unconscionable nature of the transaction sometimes overlap each other so that the one cannot fairly be considered without also considering the other. This will be evident by the fact that inadequacy of consideration may under Section 25 of the Contract Act be taken into account in determining the question of the free consent of the promisor. From what has been stated above it is clear that Rs. 400/- were due by the vendor to the vendee and that Rs. 1,000/- were paid by the latter to the former before the Sub-Registrar. The plaintiff has produced two

witnesses in support of her contention that this sum of Rs. 1,000/- was taken back from her by the defendant outside the registration office. It is incredible that if the defendant really wanted to play this trick upon the plaintiff he would have done so openly and in the presence of persons on whose support he could not rely. The plaintiff's case is that her tenants had been giving trouble, and that she agreed to the defendant's proposal of clothing him with authority to manage her affairs by executing a mortgage of two plots in his favour. In her statement under Order 10, Rule 2, C.P. Code, she further stated that Rs. 1,000/- was agreed upon as the consideration of this mortgage, and that this sum was paid to her by the defendant before the Sub-Registrar. The suggestion apparently was that the agreement between the parties was about a mortgage of only two plots for Rs. 1,000/- but the defendant by the exercise of fraud and undue influence upon her succeeded in obtaining a sale-deed in respect of her entire landed and house property in village Dhagog for no consideration. If it be a fact, however, as the plaintiff has herself stated, that a mortgage for Rs. 1,000/- had been agreed upon. It is incredible that she would have returned that amount to the defendant outside the registration office. It must be held therefore that the sale was made for the total consideration of Rs. 1,400/-. In order to prove the inadequacy of this consideration the plaintiff filed mutation extracts in respect of eight sales as exemplars. The crucial inquiry on the point of sufficiency of consideration as pointed out in the aforesaid AIR (7) 1920 P. C. 65 ruling, must relate to the de presenta value of the property in suit on the date of the sale. These exemplars do not satisfy this condition. Only one of them relates to the year 1948, and except for one (which related to a sale effected during the pendency of this litigation) all of them related to sales in other villages. These mutations are therefore not helpful in determining the 'de presenta' value of the property in suit on the date of the sale. The plaintiff also produced a number of witnesses with regard to the value of the property, but they have mentioned exaggerated figures which conflict with each other. The data given by them were also not based upon actual transactions. It cannot therefore be said that the sale in suit was for an undervalue.

10. The plaintiff has thus totally failed to discharge the initial burden that lay on her. That being so, it was not incumbent upon the defendant to prove that the sale was not induced by undue influence. I would like however to refer in this connection

to the fact that about a month after the sale in suit the plaintiff made two statements before the Naib-Tehsildar, one on 4-8-1948 at the time of attestation of mutation, and again on 6-8-1948 in connection with the objection to the sale by some zamindars of her village, in both of which she supported in detail the due execution and consideration of the sale--deed and the delivery of possession of the property to the vendee. The Naib-Tehsildar was produced as a witness by the defendant, and he has stated that the plaintiff did make those statements before him. Unless the plaintiff was a mere automaton in the hands of the defendant, it is incredible that she should have made those statements without meaning them. The learned counsel for the plaintiff-appellant argued in this connection that any statements made by her while she was still under the influence of the defendant should not be taken as ratifying the sale, and in this connection he cited the following dictum from Halsbury's Laws of England, Volume XV, Para. 508:

'During the continuance of the relation from which the presumption of undue influence arises there can be no ratification or acquiescence which will deprive the grantor, of his remedy, for the influence which occasioned the transaction also prevents the grantor from asserting his rights.'

This argument pre-supposes that the statements were made during the continuance of relations between the parties raising a presumption of undue influence. It has however been seen that such a relation never existed between the parties in this case. It is manifest therefore that the plaintiff executed the sale-deed in suit deliberately and of her own free will, and that she subsequently ratified it on the said two occasions with full knowledge and comprehension.

11. Considerable stress was laid by the learned counsel for the plaintiff-appellant on the fact that the scribe of the sale-deed was a counsel of the defendant, and that one of its attesting witnesses was a resident of the defendant's village and also his landlord. These facts are of no value for they would have been relevant only in connection with the question of whether the defendant used his position of dominance to obtain an unfair advantage over the plaintiff. The question, however, never arose in this case, as already shown.

12. The result is that this appeal is dismissed with costs and the judgment and decree of the learned District Judge are affirmed.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com